IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/01/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

S.A. NO.711 OF 1992

Ravi Fabrics .. Appellant

-Vs-

1. Shaherbon Traders

2. O.N.A. Mahboob Subhani

3. M. Ayishakani .. Respondents

Second Appeal against the judgment and decree dated 18-4-1990 in A.S. No.421 of 1989 on the file of the Principal City Civil Court, Madras against the judgment and decree dated 28-4-1989 in O.S. No.9176 of 1985 on the file of the I Assistant City C Court, Madras.

!For appellant : Mr. R.Parthasarathy for
Mr. S.Raghavan

^For respondents: Mr. M.Muniruddin Sheriff

:JUDGMENT

"What is the rate of interest from the date of notice demanding payment of interest till the date of institution of suit?" is the issue involved in this case.

2. The plaintiff in the suit is the appellant.

3. The plaintiff/company filed the suit for recovery of a sum of Rs.7,510.65 with interest at the rate of 21% per annum from the date of plaint till the date of payment.

4. According to the plaintiff, the plaintiff sold and delivered to the first defendant, the textile goods and after giving credit to the payment made by the first defendant, there was a due owing to the plaintiff Rs.7,510.65 towards the balance for e of the goods and is liable to pay interest on the unpaid value of the goods at the rate of 21% per annum. The demand notice was sent on 11-7-1984. The first defendant sent a reply, accepting his liability to pay the principal amount, but denied the l iability

to pay any amount towards interest. Hence, the plaintiff filed the suit for recovery of Rs.7,510.65 with interest at the rate of 21% per annum from the date of plaint till the date of payment and for costs.

5. According to the defendants, the goods supplied by the plaintiff were all of sub-standard quality, and this was informed to the plaintiff, and thereupon, the plaintiff asked the defendants to sell the goods and agreed not to charge any interest ny delay in selling the goods and that it is the custom of the trade not to charge interest in case the goods supplied do not conform the sample shown. The defendants agreed to pay the admitted amount of Rs.7,510.65 in instalments and requested the Cour t to dismiss the rest of the claim.

6. On the basis of the above pleadings, relevant issues were framed by the trial Court. No witness was examined on either side and only notices exchanged between the parties were marked as Exs.A-1 to A-3.

7. The trial Court, after considering the plaint, written statement and other documents, concluded that the claim by the plaintiff to pay interest at the rate of 21% per annum has not been substantiated and as per the custom prevailing in the trade, plaintiff is entitled to interest only at the rate of 6% per annum and therefore, the defendants are liable to pay the balance amount along with interest at the rate of 6% per annum from the date of due till the date of realisation of the amount.

8. Having not satisfied with the judgment and decree of the trial Court, the plaintiff filed appeal before the lower appellate Court, contending that the plaintiff would be entitled to interest at the rate of 21% per annum. The lower appellate Cou on considering the submissions made by learned counsel for parties, would hold that there is no agreement with reference to the rate of interest between parties and as such, the plaintiff would be entitled to 6% interest per annum. Accordingly, the appe al was dismissed. Challenging the same, the plaintiff has approached this Court by filing this second appeal.

9. While admitting the second appeal on 2-7-1992, this Court framed the following substantial question of law:
"Whether the lower appellate Court was right in declining to award interest to the appellant at the rate claimed by it in view of the provisions of the Sale of Goods Act and Section 34, C.P.C.?"

10. Elaborating the above substantial question of law on the strength of the decision reported in 1988 (1) L.W. 461 (RASHI LEATHERS (P) LTD. MESSRS. VS. M/S.SUPER FINE SKIN TRADERS), learned counsel for the appellant would contend that though there iscretion for the Court to fix the rate of interest from the date of plaint till the date of realisation of the amount, the Court has no discretion with reference to the rate of interest from the date of demand to the date of plaint and as such, the plai ntiff would be entitled for 21% interest per annum at least for the said period.

11. In reply, by citing 2002 (3) C.T.C. 385 (THE A.P.S.R.T.C. VS. B.VIJAYA), a Full Bench judgment of the Andhra Pradesh High Court and a

decision of the Supreme Court reported in 2002 (2) C.T.C. 354 = 2002 (1) S.C.C. 367 (CENTRAL BANK OF INDIA VS. INDRA), learned counsel for the respondents would contend that the rate of interest as pleaded by the plaintiff, has not been proved and as such, this Court has got discretion on equity to fix the rate of interest as 6% per annum and therefore, the judgm ent of both the Courts below on the said point is perfectly justified.

12. I have carefully considered the rival contentions urged by learned counsel on either side.

13. As conceded by learned counsel for the appellant, there is no difficulty in confirming the finding with regard to the rate of interest between the date of plaint till the date of realisation of the decree amount, fixing the rate of interest at er annum. The only question to be considered as requested by learned counsel for the appellant is as to whether the Court has got discretionary powers to fix the interest at the rate of 6% per annum from the date of due to the date of plaint.

14. At the outset, it shall be stated that the decision of a Division Bench of this Court in 1988 (1) L.W. 461 (supra) cited by learned counsel for the appellant does not lay down any principle with reference to the point in issue. The said decisi as given while the company petition for winding up under Section 433 of the Companies Act, was disposed of and the said decision would not be of any use to the appellant.

15. On a perusal of the judgment of the Supreme Court in 2002 (2) C.T.C. 354 (supra) and the Full Bench decision of the Andhra Pradesh High Court in 2002 (3) C.T.C. 385 (supra), cited by learned counsel for the respondents, it is clear that in the a ce of any agreement between parties with reference to the rate of interest, the Court has got powers to fix the rate of interest on equity.

16. The term "interest" is neither defined in the Civil Procedure Code nor in the Interest Act, 1978. According to the West's Legal Thesaurus, "interest" is a charge that is paid to borrow for use of money. The terms "interest" has been defined i e Concise Oxford Dictionary as the money paid for the use of money lent. The word "interest" as per the Chamber's Twentieth Century Dictionary, literally means the premium paid for the use of money. As per the Black's Law dictionary, the "interest" is the compensation allowed by law or fixed by the parties for the use of forbearance or detention of money.

17. The interest is a charge made for the use of money given by one person and taken by another. When a person claims a certain amount to be due from another and he is found entitled to it, he may be awarded a further sum called "interest" dependi n the circumstances of each case. The rate of interest may either be by agreement or by operation of statutory provisions where it specifically provides for such payment.

18. The natural conception of the word "interest" is the ordinary or normal profit which the person entitled to the principal money, might have made, had he used the said money or his expected loss under casual or ordinary

circumstances due to the payment of the same at the proper time.

19. It is noticed that the interest prior to the date of filing of the suit is a matter of substantive law and is outside the scope of Section 34 C.P.C. This Section applies to the award of interest from the date of suit till the date of decree, i "interest pendente lite" and also from the date of decree till the date of payment. Interim interest as well as future interest on judgment rests entirely in the discretion of the Court. Such discretion is not limited to the rate of interest only. It applies to the award of interest as well.

20. It is well established that the Court will award interest for the period prior to the date of the suit, if there is an agreement to pay such interest. Likewise, where there is a stipulation to pay interest at a particular rate, the Court must a that rate, however high it may be. The question of exercise of discretion by the Court does not arise in such cases. The Court has no power to deviate from the agreement by disallowing the interest or by allowing interest at a rate other than agreed b y the parties. Such agreement may be express or implied.

21. Section 80 of the Negotiable Instruments Act, 1881 enacts that where no rate of interest is specified in a negotiable instrument, the Court shall award interest at the rate of 6% per annum irrespective of the agreement between the parties. Sim ly, under Section 61 of the Sale of Goods Act, even in the absence of a stipulation in the contract to pay interest, the vendor will be entitled to interest at a reasonable rate. Likewise, the Interest Act, 1978 makes provision for payment of interest p rior to the institution of the suit. In so far as mercantile usage is concerned, in the absence of an agreement to pay interest prior to the institution of the suit, the Court may grant interest if it is payable by usage or trade having the force of law .

22. It is settled law as per the pronouncement of the Courts that the interest can also be awarded by the Court on equity. In order to invoke the doctrine of equity, it is necessary in the first instance to establish the existence of circumstance ich attract equitable jurisdiction, such as non-performance of a contract of which equity requires specific performance, or where the owner is deprived of his property without paying price thereof, or where money has been improperly detained and not paid to the person who is entitled to it.

23. Section 34 C.P.C. reads as follows:-

"34. Interest:-
(1) Where and in so far as a decree is for the payment of money, the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, i n addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of t he decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where ther no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate s uit therefor shall not lie."

24. There are three divisions of interest as dealt with in Section 34 C.P.C. The division is according to the period for which interest is allowed by the Court, namely, (i) interest accrued due prior to the institution of the suit, (ii) additional rest from the date of the suit to the date of the decree and (iii) further interest from the date of the decree to the date of the payment or to such earlier date as the Court thinks fit, at a rate not exceeding 6% per annum. These three sets of interes t are called as pre-suit interest, "interest pendente lite" and interest post decree or future interest.

25. Pre-suit interest is referable to substantive law and can be sub-divided into two sub-heads: (i) where there is a stipulation for the payment of interest at a fixed rate and (ii) where there is no such stipulation. If there is a stipulation for rate of interest, the Court must allow the rate upto the date of the suit, subject to three exceptions:- (i)any provision of law applicable to money lending transactions, or usury laws or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered nto between the parties; (ii) if the rate if penal, the Court must award at such rate as it deems reasonable and (iii) even if the rate is not penal, the Court may reduce it if the in terest is excessive and the transaction was substantially unfair.

26. If there is no express stipulation for payment of interest, the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right to interest or an implied agreement. Interest from the date of suit to date of decree is he discretion of the Court. Interest from the date of the decree to the date of payment, is again in the discretion of the Court - to award or not to award as also the rate at which to award.

27. As a matter of fact, when a notice has been issued by the plaintiff, there is specific denial through reply by the defendants that they are not liable to pay any interest on the balance payment. Despite this, the plaintiff has not chosen to pro hat there is implied agreement between parties with reference to the stipulation for payment of interest.

28. There is no dispute in the principle that pre-suit interest is a matter of substantive law and a voluntary stipulation entered into between the parties for payment of interest, would bind the parties, as also the Court, excepting in any case of the three exceptions set out earlier.

29. In this case, there is no proof to show that there was any contract between parties to pay interest at a particular rate. The claim of the plaintiff is that even assuming that there was no stipulation with regard to rate of interest, by virtue rovision under Section 34 C.P.C., the plaintiff would be entitled to the rate of interest at which the moneys are advanced by the nationalised Banks in relation to the commercial transactions which is connected with the trade, custom and usage, and as such, the plaintiff would be entitled to the rate of interest at 21% per annum for the period upto the date of suit.

30. But, it is to be stated that mere claim would not suffice to hold in favour of the plaintiff. In order to make avail of trade, custom or usage, it is incumbent on the plaintiff to adduce evidence as to what is the rate of interest prevalent a r the trade, custom or usage. Admittedly, in this case, no attempt has been made by the plaintiff by adducing evidence to prove the same. It would not be left to a speculation as to what is the prevailing rate of interest as per the existing trade, cus tom or usage.

31. The claimant cannot be relieved of his duty to adduce acceptable evidence on current rate of interest on deposits in nationalised Banks or rate of interest charged on moneys lent or advanced on commercial transactions by the nationalised Banks. course, the Court may take judicial notice of the rates prescribed by the Reserve Bank. But, it is neither uniform nor fixed for all times to come. It is fluctuating and variable. In such a situation, it is not desirable for the Court to take judicial notice and order interest on the basis thereof.

32. Where there is a source of definite evidence to prove the current rate of interest, when the party did not adduce evidence in that regard, it may not be proper for the Court to speculate as to the said rate of interest. Therefore, it would be tary to pin the parties down to adduce relevant evidence to show that particular rate of interest was the current rate of interest at the relevant time being charged by the nationalised Banks on the moneys lent or advanced on commercial transactions.

33. The abovesaid view of mine is fortified by the judgment of the Andhra Pradesh High Court in AIR 1985 A.P. 21 (SRI SRINVASA CO. VS. FIRM, V.D.H.A. SETTI).

34. Under those circumstances, the rate of interest fixed by the trial Court as well as the lower appellate Court at 6% per annum in regard to the period between the date of demand and the date of presentation of the suit, is quite correct and does warrant any interference. Consequently, it has to be held that no substantial question of law would arise for consideration in the second appeal. The second appeal is dismissed. No costs.

Index: Yes
Internet: Yes
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To
1.Principal Judge, City Civil Court, Madras.
2.I Asst. Judge, City Civil Court, Madras.
3.Record Keeper, V.R. Section, High Court, Madras.